

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ELWOOD DONNEL NEAL,

Petitioner,

vs.

STATE OF NEVADA, *et al.*,

Respondents.

3:13-cv-00564-LRH-VPC

**ORDER**

This action was filed by a Nevada state prisoner who proceeds *pro se*. The Clerk of Court opened this action as a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254.

To the extent that petitioner intends to file a habeas corpus petition, he has failed to simultaneously submit either a motion for leave to proceed *in forma pauperis* or payment of the \$5.00 filing fee for habeas corpus actions. Petitioner shall be sent an application form for leave to proceed *in forma pauperis*, should he wish to apply for *pauper* status, and alternatively given an opportunity to pay the requisite filing fee.

The initiating document filed by petitioner in this action is captioned “notice of appeal.” (ECF No. 1). Petitioner states that he wishes to appeal from a judgment of the Second Judicial District Court for the State of Nevada. For the time being, the Court assumes that petitioner wishes to file a petition for writ of habeas corpus in this Court. A *pro se* habeas corpus petitioner is required to use the Court’s approved form for filing actions pursuant to 28 U.S.C. § 2254. Local Rules of Special Proceedings 3-1 (“[a] petition for writ of *habeas corpus*, filed by a person who is not represented by an attorney, shall be on the form provided by this court.”). The Court will provide

1 petitioner with the approved form for filing a *pro se* habeas corpus petition. The Court will order  
2 that the petitioner's proposed habeas corpus ("notice of appeal") be stricken and a copy thereof  
3 returned to him. Petitioner will be allowed an opportunity to file a habeas corpus petition using the  
4 form provided by the Court. If petitioner fails to provide the Court with his petition using the Court-  
5 approved form, this action will be dismissed.

6 **IT IS THEREFORE ORDERED** that the Clerk **SHALL SEND** to petitioner the Court-  
7 approved *in forma pauperis* form, together with instructions for filing the form. Within **thirty (30)**  
8 **days** from the date of entry of this order, petitioner **SHALL FILE** an *in forma pauperis* application  
9 using the Court-approved form. Alternatively, within **thirty (30) days** from the date of entry of this  
10 order, petitioner **SHALL FILE** the \$5.00 filing fee with the Clerk of Court.

11 **IT IS FURTHER ORDERED** that petitioner's proposed habeas corpus petition, captioned  
12 "notice of appeal," (ECF No. 1) is hereby **STRICKEN**. The Clerk **SHALL RETURN** a copy of  
13 ECF No. 1 to petitioner.

14 **IT IS FURTHER ORDERED** that the Clerk **SHALL SEND** petitioner the form for filing a  
15 § 2254 habeas corpus petition in this Court, together with instructions for filing the form. Within  
16 **thirty (30) days** from the date of the entry of this order, petitioner **SHALL FILE** a habeas petition  
17 using the Court-approved form.

18 **IT IS FURTHER ORDERED** that if petitioner fails to fully comply with all directives in  
19 this order, this action shall be dismissed.

20 Dated this 21st day of November, 2013.

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23 LARRY R. HICKS  
24 UNITED STATES DISTRICT JUDGE  
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